est vidua viventis. The wife of a named person is ascertainable at any given time; but his widow can only be ascertained after his death. This is a gift to a person or persons filling a certain character namely, widow or widows of Low Kay Whay. Such a person or persons could not be ascertained until after the death of Low Kay Whay. So in a policy of insurance the word "widow" is not confined to the person who was the wife when the policy was issued. *In re Lory, deceased*, 7 T.L.R. 419. *In re Drew; Drew* vs. *Drew*, (1899) 1 Ch. 536. *Jarman*, 3rd Edn. 376. *In re Parker's Policies*, (1906) 1 Ch. 526. In this case there was evidently a general intention on the part of the Testator to provide for the family of Low Kay Whay.

If a Chinese (or formerly a Mohammedan) die intestate in the Colony leaving two or more widows, they are entitled to share equally the share which the Statute of Distribution allots to the widow. *In the goods of Lao Leong Ann*, and other cases. Maria was therefore entitled as a widow of Low Kay Whay.

Mundell (for Tan Joon Neo, the legal personal representative of Chua Geok Koon) did not oppose the claim of Maria except in so far as such claim was made to the whole of the one fourth share of income. He contended that Chua Geok Koon's legal personal representative was entitled to one half of such share of income.

S. G. Pillay (for Tay Sim Geok the representative of Chan Tew Neo deceased, the widow and residuary legatee of the Testator). The general presumption is applicable in this case, and as Maria was not a wife at the date of the Will she cannot now take any benefit as a widow of Low Kay Whay. *In re Coley. Hollinshead* v. *Coley*, (1903) 2 Ch. 102. *In re Griffiths' Policy*, (1903) 1 Ch. 739. The Testator evidently contemplated one widow only.

W. H. Salt for the Trustees.

Cur. Ad. Vult.

PRICHARD, J., delivered an oral judgment holding that both Chua Geok Koon and Maria had been entitled as widows of Low Kay Whay under the gift in the Will; but as the children of Maria, and the representatives of the children of Chua Geok Koon had not been served, he held that the proceedings were deficient for want of parties and adjourned the question as to what interest, if any, each took and made an order for adding the necessary additional parties.

Order Accordingly.

Solicitors for Plaintiffs: *Allen & Gledhill.*
Solicitors for first Defendant: *Braddell Bros.*
Solicitors for second Defendant: *Sisson & Delay.*
Solicitor for third and fourth Defendants: *S. G. Pillay, Esq.*

[COURT OF CRIMINAL APPEAL]
HUGGARD, C.J., TERRELL & MILLS, JJ.

February 2, 1935.

REX v. KOH SOON POH.

[SINGAPORE CRIMINAL APPEAL No. 3 of 1934]

Ordinance No. 53 (Evidence) S. 157—Corroboration of testimony of witness—nature of corroboration—Criminal Procedure Code S. 199—duties of Trial Judge thereunder.

Any former statements made by a witness and coming within S. 157 of Ordinance No. 53 (Evidence), are admissible as corroboration of the evidence given by such witness at the trial.

Discussion of procedure proper to be observed by the Trial Judge on a criminal trial when counsel for the Defendant submits that there is no case to go to the jury.

Criminal Appeal.

V. D. Knowles for Appellant.

Adrian Clark, D.P.P., for Crown.

The Appeal was heard by Sir Walter Huggard, C.J., Terrell and Mills, JJ.

The facts and arguments sufficiently appear from the Judgment of the Court.

Cur. Ad. Vult.

The Judgment of the Court was delivered by **TERRELL, J.**—

The Appellant was tried before Prichard J. and a jury and convicted on three charges of abetting the forgery of certain documents by one Lim Thai Hock. Lim Thai Hock was clearly an accomplice. The only ground of appeal which it is necessary to notice is the following :—

> " That the attention of the Jury was not sufficiently directed to the danger of accepting accomplice's evidence, and that there was no corroboration given at the trial."

Misdirection and corroboration in fact are, of course, different points and it will be convenient to consider first of all whether there was any and, if so, what corroboration of Lim Thai Hock's evidence.

One of the witnesses for the prosecution was one Samuel, an ex-schoolmaster. He was present when several of the letters were said to have been written by Lim Thai Hock at the dictation of the Accused and, when referred to, gave his assistance in spelling and in rendering certain words and phrases into proper English. He says he never saw any signature put at the bottom of any of the letters but heard Lim Thai Hock asking the accused to pay him well for the forging of a name. Except for that, there is no evidence that Samuel was interested whether the letters were signed or not. He may or may not have been an accomplice in the matter of the defamatory remarks about various people which the letters contained, though even this is open to doubt. In order that Samuel's evidence may be

subjected to the rule as to the evidence of accomplices he must be shown to be an accomplice in the crime, charged, i.e. abetment of forgery (see *Rex* v. *Archibald King*, 10 Cr. A. R. 117,) and in the opinion of the Court Samuel's evidence should not have been treated as that of an accomplice and could legitimately be relied on as corroborating Lim Thai Hock's evidence. When therefore the learned Judge in the course of his charge suggested to the jury that Samuel was an accomplice, he took a view of Samuel's evidence which was, if anything, unduly favourable to the Accused.

There was also another prosecution witness, Tan Swee San, who corroborated the evidence of Lim Thai Hock in certain essential particulars. The learned Judge directed the jury that Tan Swee San's evidence was in fact evidence in corroboration, and the Appellant has argued that the learned Judge should, in so directing the jury, have warned them that it was only corroborative evidence if they believed it. That consideration, of course, applies to all evidence; it is for the jury to say whether they believe it or not, and the jury were informed by the learned Judge that if they had any real doubt as to the guilt of the Accused, they should let him off. It may not therefore even have been necessary for the learned Judge to emphasize this point with regard to Tan Swee San's evidence. He did, however, in fact warn the jury in the following words. He said "Gentlemen, it is for you to attach what importance to his (Tan Swee San's) evidence you think fit." This is strictly in accordance with the principle laid down in several cases, that it is for the Judge to rule whether or not there is any corroborative evidence, and that it is for the jury to decide whether they accept it or not (see *Rebati Mohan Chakravarty* v. *The Emperor*, I.L.R. 56 Cal. 150 at 158 and *Golam Asphia and anor.* v. *The Emperor*, A.I.R. (1932) Cal. 296 at p. 296-7).

Then there is the corroboration afforded by the note-book (Exhibit "G") kept at the time of the transactions by Lim Thai Hock. This book mentions the Accused not only under his admitted nickname 'Chik Bah' but also by his actual name Koh Soon Poh or by his initials 'K.S.P.' It is evidence that the Accused paid money to Lim Thai Hock on the actual days that the letters were written and in some cases substantiates the subject-matter of the letters. Although Counsel on the appeal tried to dispute the genuineness of this book, it was accepted as genuine by Counsel for the defence in the Court below and this Court sees no reason to doubt that it is genuine. It is argued however that in any event this book could not be accepted as corroboration of Lim Thai Hock's evidence in view of the rule laid down in England that a witness cannot corroborate himself (see *Rex* v. *Job Whitehead*, (1929) 91 Cr. A.R. 23). Although this rule was adopted by the Calcutta High Court in the case of *Emperor* v. *Nur Ahmed*, A.I.R. (1934) Cal. 7 at p. 9 this Court is of opinion that in view of section 157 of the Evidence Ordinance, the English rule cannot be accepted without qualification. Section 157 provides as follows:—

> "In order to corroborate the testimony of a witness, any further statement made by such witness.....relating to the same fact at or about the time when the facts took place.....may be proved."

Such statements are then by law treated as corroboration, whereas in England any further statement made by the witness himself is inadmissible. The Court accordingly accepts the note-book as corroborating Lim Thai Hock's verbal testimony.

There is also further oral evidence which affords slight corroboration, to which it is not necessary to refer in detail, and there is the internal evidence of the letters themselves.

The Court is satisfied therefore that there was in fact ample evidence to corroborate the testimony of Lim Thai Hock.

If there was such evidence and the jury believed it, the rule that the jury should be warned not to convict on the uncorroborated evidence of an accomplice did not arise. All the Appellant's Counsel can argue is that the learned Judge misdirected the jury in not warning them that if they rejected all the evidence in corroboration they must be careful not to convict on the uncorroborated evidence of Lim Thai Hock. It is to be remarked that the question of corroboration was raised by the Judge himself and that Counsel for the defence made no point of it at all. The matter was, however, very fully dealt with by the learned Deputy Public Prosecutor in his final address and the learned Judge directed the jury to accept what the learned Deputy Public Prosecutor has said on the subject. No doubt it is desirable that the Judge should himself direct the jury in his final charge on a matter of this kind, but in a case where the jury have been fully warned in the course of the trial of the danger of accepting the uncorroborated evidence of an accomplice, a Court of Appeal is not called upon to interfere. See *Rex* v. *Peter Quinn*, 6 Cr. A.R. 269.

Even in a case where corroboration is required by statute, and the Judge has given no express directions on the matter, the Court will not quash the conviction if there was in fact corroboration. *Rex* v. *Claude Gregg*, 24 Cr.A.R. 13.

The appeal must therefore be dismissed.

One further point was discussed during the appeal, namely, the proper procedure under section 199 of the Criminal Procedure Code.

In the present case, at the close of the case for the prosecution, Counsel for the defence submitted to the Judge (presumably under section 199 (1)) that there was no case to meet. The learned Judge rejected this submission, whereupon Counsel then requested him to inform the jury of their powers to stop the case under section 199 (3). The learned Judge acceded to this request and read the sub-section to the jury, after which the foreman of the jury stated that the jury considered that there was a case to meet.

Section 199 of the Criminal Procedure Code reads as follows:—

> "199.—(1) When the case for the prosecution is concluded the Court, if it considers that there is no evidence that the accused committed the offence, may direct the jury to return a verdict of not guilty.
>
> (2) If the Court considers that there is evidence that the accused committed the offence the Court shall call on the accused to enter on his defence.
>
> (3) The jury may return a verdict of not guilty, either unanimously or by a majority of not less than five to two, at any time after the conclusion of the evidence for the prosecution, if they consider the case to be one in which they could not safely convict."

It is, of course, proper for Counsel for the defence in any criminal trial before the Supreme Court to submit, at the close of the case for the prosecution, that there is no case to go to the jury. Such a submission is made to the Judge alone, Counsel for the defence is entitled to address the Judge on the submission, and Counsel for the Crown is entitled to be heard. The trial Judge will use his discretion as to whether he could request the jury to retire while the matter is being argued. If the trial Judge accepts the submission of Counsel for the defence he will direct the jury to return a verdict of "Not Guilty" under sub-section (1) above, otherwise he will call on the accused to enter on his defence as required by sub-section (2). It will be observed that the language of sub-section (2) is peremptory.

Now as to sub-section (3): Even though a submission under sub-section (1) has been made and rejected, it is still open to Counsel for the defence to submit that the Judge should inform the jury of their powers under sub-section (3). In the opinion of this Court such a submission should be limited to a request to the Judge that he should draw the attention of the jury to the provisions of sub-section (3). In our view Counsel has no right at this stage to address the jury direct as to whether or not they should exercise their powers under that sub-section.

As to what course the trial Judge should pursue when this submission is made to him, it is difficult, if not impossible, to lay down any hard and fast rules, as much will depend on the circumstances of each particular case. It must be borne in mind that the Judge will already have come to the conclusion that there is a case to meet and will have called on the defence. It is possible, therefore, that he may decline to read the sub-section in question to the jury, and clearly there is no definite obligation upon him to do so. On the other hand, if the case for the prosecution is not strong he may think it right to call the attention of the jury to their powers, but if he does so he should at the same time express his opinion that there is *some* evidence against the accused.

Some difficulty appears to have arisen in the past regarding sub-section (3) owing to an opinion expressed by Ebden, J. in 1918 (see Mal. L.J., Vol. II p. iii (1)) that this sub-section substantially altered the law by handing over to the jury the discretion to stop a case which formerly rested with the Judge. This Court is unable to accept the interpretation placed upon sub-section by Ebden, J. In our opinion the sub-section merely declares what was always the common law of England, namely, that after the jury have heard all the evidence for the prosecution they can stop the case if they do not think it would be safe to convict.

Appeal Dismissed.

Solicitors for the Appellant:—

Braddell Brothers.

END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.